

Remarks/Arguments

Rejection of Claims 1-3 under 35 U.S.C. §103(a)

Claims 1-3 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,202,923, issued to Boyer et al, in view of U.S. Patent No. 6,493,427, issued to Kobylevsky et al. As will be discussed below, Applicant respectfully disagrees with the rejection of claims 1-3 under 35 U.S.C. § 103(a) as being unpatentable over Boyer et al. in view of Kobylevsky et al. Claim 1 has been amended to more clearly define Applicant's inventive concept. Claims 2-3 have been cancelled herein solely to simplify the issues presented in this case. Applicant respectfully disagrees with the statements made by the Examiner concerning claims 2-3 to protect Applicant's rights to pursue such claims in a continuation patent application.

As background, drug diversion, fraud and errors are very large problems within the pharmaceutical industry. Medical or drug related errors are generally related to a lack of comprehensive patient information and history. These types of errors include excessive or redundant tests, services, prescription errors, missed diagnoses or false starts, as well as illness, hospitalization and death created by conflicting medications or illegible scripts.

Drug fraud and diversion includes common schemes such as doctor shopping, pharmacy hopping, stolen, forged or altered scripts, and duplication of scripts, fraudulent "call-in" authorizations and unauthorized use of DEA or state license numbers.

Medical and drug related errors are very costly. In the United States, medical related errors are estimated to cost \$20 - \$177 billion per year. Nationwide, 100,000 people are estimated to die each year and between 1 ½ - 6 million are harmed each year.

The problems associated with drug fraud and diversion are also very costly. These types of problems have been estimated to have an annual cost of \$25 billion per year.

The present invention of claim 1 is directed to a members only Internet based host system database, accessible by a browser. Doctors and pharmacies are verified for legitimacy and renewal communication is done through an internal messaging system within the host system. The goal of claim 1 is to facilitate information flow between the pharmacist and the doctor while maintaining a secure environment to help prevent fraud and other types of errors or omissions.

Dependent claims 4-8 have been added to more clearly cover the use of the present invention of claim 1 with respect to monitoring activities by third parties, such as governmental agencies or insurance companies or others entitled by law.

Boyer teaches an automated pharmacy to improve the workflow of medication dispensing and to reduce errors during the filling of prescriptions. Boyer's automated pharmacy includes a data entry workstation for processing data relating to a prescription, a filling workstation for dispensing a drug type in a container, a checking workstation where a pharmacist checks and validates that the correct prescription has been dispensed, a counseling workstation for providing information to a customer, and a point-of-sale workstation for providing a prescription to a customer and receiving payment therefor.

Boyer describes an in-house, single location, prescription dispensing system. Essentially, Boyer facilitates automated dispensing of drugs and the only "verification" that Applicant can locate in Boyer (albeit a very important verification) is to make sure that the right pill gets in the right bottle for a given script. Boyer, however, does not appear to teach any manner of improving the flow of information between the doctor and the pharmacist. The prescriptions that Boyer fills are provided in either written form or call in form. See Col. 6, Ins. 5-13.

Kobylevsky, on the other hand, is directed to a system for enhancing the flow of information from patients and/or doctors to a pharmacy. The information flow is one-way, that is, from the patient or the doctor to the pharmacy. Kobylevsky does not teach any manner for the pharmacy to communicate with the doctor within their system.

Applicant believes that the Examiner may be correct in determining that it would be obvious or logical to combine the teachings of Boyer with the teachings of Kobylevsky. In this regard, Boyer teaches how to automate a pharmacy and provide verification checks within the pharmacy and Kobylevsky teaches one manner of facilitating one-way or unidirectional information flow from the doctor or the patient to the pharmacy. This would appear to be a logical combination to prevent errors within the pharmacy and to keep the pharmacist from answering the telephone. (See col. 1, lines 15-22 of Kobylevsky).

However, the teachings of Boyer and Kobylevsky, even if combined, still do not teach Applicant's inventive concept of independent claim 1, as amended. As the Examiner is aware, the proper test for obviousness is 1) whether all of the claimed limitations are

taught or suggested in the prior art cited by the Examiner, 2) whether the prior art suggests or motivates the modification of the references or the combination of the reference teachings, and 3) whether there is a reasonable expectation of success. In this case, it is Applicant's belief that 1) all of the claimed limitations are not taught or suggested by Boyer in view of Kobylevsky, and thus, 2) there is no suggestion or motivation to make the claimed combination of the references nor 3) any reasonable expectation of success.

That is, claim 1, as amended, recites the step of "providing a host system established as a website communicating with the Internet and available for login by member pharmacies and member health care providers." Boyer does not teach the step of providing a host system established as a website . . . and available for login by member pharmacies. Boyer teaches a single location automated prescription system. While it may be true that Boyer teaches an "internet connection 87" (see Col. 11, Ins. 63-67), such Internet connection 87 is not used to connect to other pharmacies or provide information within Boyer's database to other member pharmacies. Boyer also does not teach that their database server 85 is available for login by any member health care providers, as recited in claim 1.

The method of claim 1 proceeds to the step of "providing electronically a prescription renewal screen by the host system to a pharmacy system associated with one of the member pharmacies, the prescription renewal screen being associated with a previously filled prescription." This step has been clarified by amending the term "filled prescription" to recite the term "previously filled prescription." While it may be true that Boyer fairly

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teaches the inputting of a renewal prescription into their system, Boyer would simply treat the renewal prescription as a "new" prescription. Where does Boyer teach a "renewal screen being associated with a previously filled prescription?"

Claim 1 also recites the step of "transmitting the renewal request information through the host system to a health care provider system associated with a member health care provider identified by the previously filled prescription stored on the host system." In the response, the Examiner states that this step is taught in Boyer and provides a citation to Col. 6, Ins. 1-67. Applicant has reviewed Boyer and cannot locate any teaching of the step of transmitting renewal request information through the host system to a health care provider. Boyer also does not teach the step of transmitting to a health care provider system associated with a member health care provider identified by the previously filled prescription stored on the host system. Although it is possible that the pharmacist of Boyer could call a patient's doctor to verify a renewal, this type of communication would not be through the host system. Nor are any health care providers a "member" of Boyer's system. Boyer's system is simply not available for login by any health care providers.

As discussed above, Kobylevski does teach a system for enhancing the flow of information from patients and/or doctors to a pharmacy. However, Kobylevski functions in a completely different manner from Applicant's invention as recited in claim 1. That is, Kobylevski teaches a central station to which a pharmacy can forward calls. The central station can be set up to receive transferred calls from more than one member pharmacy. However, any records containing prescription information stored by Kobylevski are not

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available to all member pharmacies. Moreover, none of the information collected by the central station is available to a health care provider. Claim 1, in contrast, recites "the records containing prescription information being available to all member pharmacies and member health care providers."

Further, in Kobylevski the information flow is one-way, that is, from the patient or the doctor to the pharmacy. Thus, Kobylevski also does not teach the step of "transmitting renewal request information through the host system to a health care provider".

In view of the foregoing, it is Applicant's position that the combination of Boyer and Kobylevsky does not teach or fairly suggest Applicant's inventive concept recited in claim 1, and thus each of the claims that depend therefrom. Reconsideration and withdrawal of the rejection of claim 1 is respectfully requested.

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SUMMARY

The foregoing is intended to be a complete response to the Office Action mailed August 25, 2003. Should the Examiner have any comments or questions regarding the foregoing, Applicant's attorney would welcome a telephonic interview with the Examiner.

Respectfully submitted,



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